

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

THE COURTLAND COMPANY, INC.,
a West Virginia Business
Corporation,

Plaintiff,

v.

Civil Action No. 2:18-cv-01230

UNION CARBIDE CORPORATION,
a New York Corporation,

Defendant.

ORDER

Pending is the defendant's motion to file an answer to Counts II, III, IV, V, and IX of the plaintiff's complaint, filed on October 13, 2020 (ECF No. 172).

The plaintiff initiated this action by filing a multi-count complaint on August 15, 2018. See ECF No. 1. On September 28, before the time for filing a responsive pleading expired, see LR Civ P 12.1; ECF No. 10, the defendant filed a Fed. R. Civ. P. 12(b) motion to dismiss Counts II, III, IV, V, VII, and IX of the complaint and an answer to the remaining counts, see ECF No. 13; ECF No. 14; ECF No. 15. The defendant thereafter filed an amended answer to the remaining counts within the period allotted for amending a pleading once as a matter of course. See ECF No. 21; see also Fed. R. Civ. P.

15(a)(1)(A). By a September 29, 2020 memorandum opinion and order, the court granted the defendant's motion to dismiss with respect to Count VII but denied it with respect to the remaining challenged counts. See ECF No. 163. Fourteen days later, on October 13, 2020, the defendant filed the current motion to file an answer with respect to the counts of the complaint that have not been dismissed and for which no answer has been filed. See ECF No. 172. The defendant filed the answer on the same day. See ECF No. 171. The plaintiff has not responded to the motion.

If a party files a Rule 12(b) motion before the period for filing a responsive pleading expires, the time for filing a responsive pleading, such as an answer, is "alter[ed]," and, "if the court denies the motion . . . , the responsive pleading must be served within 14 days after notice of the court's action."

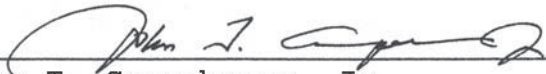
Fed. R. Civ. P. 12(a)(4)(A). A timely Rule 12(b) motion directed at only a portion of the complaint suspends the time for filing an answer to at least those portions of the complaint, and the answer to those portions must be filed within the 14-day period set by Rule 12(a)(4)(A). See 5B Charles Alan Wright et al., Federal Practice and Procedure § 1346 (3d ed. 2020).

Under Rule 12(a)(4)(A), because the defendant timely filed a Rule 12(b) motion to dismiss Counts II, III, IV, V, and

IX, its answer with respect to those counts was due within 14 days of the court's memorandum opinion and order denying dismissal, i.e., October 13, 2020, the same date that the defendant filed its answer with respect to those counts. Thus, the Rules already permit the defendant to take the action for which it is requesting a court order. There is no need for a party to request an order from the court to take an action that the Rules already permit the party to take. Cf. Fed. R. Civ. P. 7(b). Accordingly, it is ORDERED that the defendant's motion to file an answer (ECF No. 172) be, and hereby it is, denied as moot and that the answer submitted October 13, 2020 (ECF No. 171) be, and hereby it is, deemed timely filed.

The Clerk is directed to transmit copies of this order to counsel of record and any unrepresented parties.

ENTER: October 29, 2020



John T. Copenhaver, Jr.
Senior United States District Judge